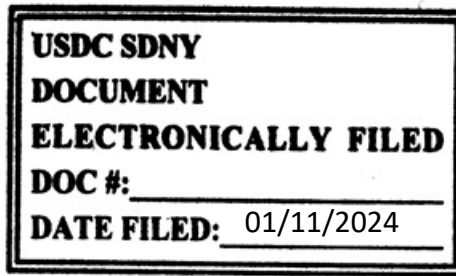


**THE
LEGAL AID
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January 5, 2024

Honorable Stewart D. Aaron
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007



President

Twyla Carter
Attorney-in-Chief
Chief Executive Officer

Adriene L. Holder
Chief Attorney
Civil Practice

Elizabeth Saylor
Citywide Director
Employment Law Unit

Re: *Jorge Rodriguez v. Iris Cotto*, 1:23-cv-01350 (JGLC)(SDA)

Dear Magistrate Judge Aaron,

Plaintiff Jorge Rodriguez submits this letter motion renewing his prior motion to compel production of (1) work order forms and documents reflecting the employment of porters at Plaintiff's worksite, and (2) responses to Plaintiff's requests for admission. *See* ECF No. 73. Plaintiff also seeks (3) an order compelling Defendants to respond to the remainder of his requests for production propounded on the record at depositions. The requests for production, as reflected in emails sent to opposing counsel, are attached as Exhibit 1 to this letter. Defendants have failed to provide this discovery material despite substantial effort on Plaintiff's part to obtain their cooperation. Indeed, I have been unable to reach Defendant's counsel to discuss discovery despite repeated emails, calls, and text messages. My emails to Mr. Soto regarding the requests for production, as well as Defendants' failure to produce witnesses for depositions, are attached as Exhibit 2. The Court should order Defendants to immediately produce the responses and documents requested by Plaintiff.

Defendants ignored numerous previously agreed upon deadlines for production of the discovery responses at issue. Plaintiff made requests for production on the record at the deposition of Iris Cotto on November 14 and 15, 2023. Defendants agreed to provide responses by November 27, but did not do so. Defendants also failed to produce relevant WhatsApp messages embraced by the Court's order compelling production of discovery until December 19. *See* ECF No. 55 (ordering Defendants to respond to Plaintiff's first requests for production by October 2, 2023). On December 15, Defendants provided Ms. Cotto's phone to Plaintiff's counsel for extraction of the WhatsApp messages.¹ *See* ECF No. 75, 2. During a meet and confer that same day, Defendants indicated that they would provide responses to Plaintiff's requests for production arising from the depositions by December 18. Defendants claimed to have already sent responses to Plaintiff's requests for admission and agreed to re-circulate their responses by the same date.

As of the date of this letter, Defendants have made no further production. Defendants have also failed to produce witnesses for depositions on January 4 and January 5, 2024. Defendant Josue

¹ Defendants produced the WhatsApp material from Ms. Cotto's phone on December 19, 2023. The production contained thousands of relevant messages sent by plaintiff during his employment, including messages indicating Plaintiff worked outside of his nominally scheduled hours. Defendants had ready access to this material throughout litigation yet asserted they were not in possession of responsive communications.

Velazquez Sr. failed to appear on January 4th despite missing three prior deposition dates, on November 14, December 5, and December 20, apparently due to his health. Defendants did not represent that Mr. Velazquez failed to appear on January 4th because of his health.²

The Court should order production of the material sought in Plaintiff's prior motion to compel. *See* ECF No. 73. In that motion, Plaintiff requested production of requests Nos. 1 to 3 in Exhibit 1. Defendants still have not responded to requests Nos. 2 and 3, work order forms completed by Plaintiff and documents reflecting the employment of porters assigned to Plaintiff's worksite. *See* ECF No. 73; Exhibit 1 Nos. 2-3. These documents were embraced by Plaintiff's previous requests for production and are relevant to establishing Plaintiff's work hours. *See* ECF No. 73. Though Plaintiff served his requests for admission on September 29, 2023, he still has received no response from Defendants. *See Id.*

The Court should additionally order Defendants to respond to the remaining requests for production contained in Exhibit 1. Plaintiff made these requests on the record at the depositions of Defendant Iris Cotto on November 14 and 15, Lazaro Sierra on November 28, Norberto Velazquez on November 30, and Alberto Santiago on December 8. Mr. Velazquez is the COO of Defendant Jay & M Corp., Mr. Sierra and Mr. Santiago currently work as superintendents for Defendants. Plaintiff made many of these requests more than thirty days ago, and Defendants' responses are due under Federal Rule of Civil Procedure 34.

Defendants withhold relevant documents requested by Plaintiff and failed to appear for agreed upon deposition dates. Plaintiff is concerned that the parties will be unable to completed discovery by the January 12, 2024, because Defendants have ignored repeated requests from Plaintiff's counsel to meet and confer. *See* Exhibit 2. The Court should order Defendants to respond to Plaintiff's requests for production contained in Exhibit 1 and Plaintiff's requests for admission. Thank you for your attention to this matter.

Respectfully,

/s/ Michael Diller

The Legal Aid Society
Attorneys for Plaintiff
49 Thomas Street, 5th Fl.
New York, NY 10013
(917) 581-2793
mdiller@legal-aid.org

Because the parties have reached a settlement (*see* ECF No. 79), this motion is DENIED AS MOOT. SO ORDERED.

Dated: January 11, 2024



² Virginia Velazquez, a paralegal employed by Mr. Soto, indicated in an email that Defendants would not go ahead with the deposition on January 4 because of Mr. Soto's unavailability, rather than Mr. Velazquez's health. *See* Exhibit 2, 4-5.